

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
Civil Action No.: 3:05-CV-00353

WATER OUT DRYING CORP

Plaintiff,

v.

ROSS ALLEN, and  
WATER OUT FLASHING, INC.

Defendants.

CONSENT JUDGMENT  
AND ORDER

WHEREAS, The parties have filed claims, counter-claims, and defenses in this civil action.

WHEREAS, the Parties, as shown by their signatures set forth below, accept the following terms in complete settlement, satisfaction, and release of their respective claims, demands, and/or causes of action which they asserted or could have asserted in the above captioned civil action.

AND WHEREAS, The Court has jurisdiction of this matter based on the pleadings of the parties.

NOW Therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

I. Obligations of Defendants

The Defendants Ross Allen and Water Out Flashing, Inc., are permanently enjoined to do the following within six (6) months of entry of this Consent Judgment:

- A. Cease using the term WATER OUT or any combination of the terms "Water" and "Out" as part of its name or to refer to Ross Allen or Water Out Flashing, Inc., or any other business or entity that Defendants may form.

- B. Cease using the WATER OUT mark or any combination of the terms "Water" and "Out" in connection with Ross Allen's or Water Out Flashing, Inc.'s, products or services, including without limiting the generality of the foregoing, all advertising, literature, signage, web pages, e-mail messages, voice mail greetings, letterhead, business cards, company names, and all other materials.
- C. Within three (3) months from entry of this Order, Defendant Water Out Flashing, Inc., shall effectuate a corporate name change with the Office of the Secretary of State of North Carolina, changing the corporate name of the corporation from Water Out Flashing, Inc., to a name that does not contain the terms "Water" and "Out".
- D. Within three (3) months from entry of this Order, Defendant Water Out Flashing, Inc., shall select a new domain name that does not contain the terms "Water" and "Out" for the use of hosting Defendant's website.
- E. During the duration of the six (6) month period, Defendant Water Out Flashing, Inc., may use the domain www.wateroutflashing.com as a linking page to its new web domain. At the end of the six (6) month period, Defendant Water Out Flashing shall assign the domain www.wateroutflashing.com to Water Out Drying Corp.

The Defendants Ross Allen and Water Out Flashing, Inc., are permanently enjoined from the following:

- A. Using or applying to register a mark comprising, solely or in part, the word WATER OUT, or any other mark that is likely to cause confusion with the WATER OUT Marks.

- B. Selling, distributing, or offering for sale products or services related to the Water Out products or services under a name or mark that is likely to be confused with the **WATER OUT** mark, except during the six (6) month phase out period in which Defendants may liquidate their existing inventory. .
- C. Using any mark, internet web site or doing any act or thing likely to induce the belief on the part of the public or Water Out's customers or potential customers that Ross Allen's or Water Out Flashing, Inc.'s, goods or services are in any way connected with Water Out.
- D. Challenging in any way Plaintiff's marks through an opposition, cancellation, invalidity suit or other action at law or equity. Ross Allen and Water Out Flashing, Inc., hereby waive any and all right to pursue any such cancellation, opposition, or invalidity suit against Plaintiff Water Out Drying Corp. Ross Allen and Water Out Flashing, Inc., acknowledge Water Out's federal and common law rights to the **WATER OUT** Mark and any and all marks incorporating the term **WATER OUT** used on or in connection with drying machines, trailer mounted drying apparatus, restoration services, and drying services, including any related products or services. Ross Allen and Water Out Flashing, Inc., acknowledge the validity of all marks, including the **WATER OUT** mark, owned by Water Out Drying Corp.

II. Jurisdiction and Default

- A. The parties agree that this Court shall retain jurisdiction to enforce the injunction set forth above and any and all matters related thereto, and, specifically, that if the Court sitting without a jury and on motion of Plaintiff finds that Defendants have violated the permanent injunction set forth above, it shall enter a judgment against

Defendants, jointly and severally, for \$200,000 as equitable monetary relief, including attorney's fees and other costs.

- B. If, after appropriate proceedings on such motion the Court finds a violation of said injunction, the Court may provide such other relief as is just and proper, which shall include all reasonable attorney's fees and costs relating to the motion and proceedings to enforce the injunction and remedy any violations which are found.

III. General Provisions

- A. Independence of Obligations: It is further ordered that the expiration of any requirements imposed by this Consent Judgment shall not affect any other obligation or provision of this Consent Judgment.
- B. Continuing Jurisdiction: It is further ordered that this Court shall retain jurisdiction of this matter for all purposes.

IV. Acceptance by the Parties

The parties hereby stipulate and agree to the entry of the foregoing Order which shall constitute a final judgment in this action.

Signed and Stipulated by:

L. Ross Allen

Ross Allen

In his personal capacity

Date: 10-12-07

L. Ross Allen

Name: L. Ross Allen

Title: President

On behalf of Water Out Flashing, Inc.

Date: 10-12-07

Name: Charles S. Coy  
Title: Pres

On behalf of Water Out Drying Corp

Date: 10/15/07

IT IS SO ORDERED

Graham C. Mullen  
Graham C. Mullen  
United States District Judge